THE HONOURABLE SRI JUSTICE V. ESWARAIAH

WRIT PETITION No.20943 OF 2006

DATED: 12-07-2007

BETWEEN

M/s. Durga Restaurant & Bar,
At premised No.18-4A,
Sukarlabagh, Machilipatnam,
Represented by the Licensee
Thummala Choudary Babu,
S/o. Venkata Subbaiah,
R/o. Kodali, Ghantasala Mandal,
Krishna District.

...PETITIONER

AND

The Government of Andhra Pradesh,
Rep. by Principal Secretary to Government,
Revenue (Ex.II) Department, Secretariat
Buildings, Secretariat, Hyderabad and
others.

...RESPONDENTS

ORDER:

Petitioner, the licence holder of Form 2B bearing licence No.19/2006-07 dated 12.09.2006 for the year 2006-07 with effect from 12.09.2006 to 20.09.2007, seeks remission of proportionate licence fee for the period from 01.07.2006 to 14.09.2006 on the ground that there was delay on the part of the licensing authority in granting licence from 01.07.2006 to 12.09.2006 and that he commenced business only from 15.09.2006.

2. The undisputed facts are that the petitioner made an application in Form 1A on 16.06.2006, intending to establish bar, for prior clearance under Rule 5(1) of the Andhra Pradesh Excise (Lease of Right of Selling by Shop

and Conditions of Licence) Rules, 2005 (for short 'the Rules'). The Commissioner of Prohibition and Excise vide proceedings dated 11.07.2006 directed the Prohibition and Excise Superintendent, Machilipatnam, to verify the details of the premises and also to verify the distance from educational institutions, religious centers and submit report. Accordingly, the Prohibition and Excise Superintendent, vide proceedings dated 12.07.2006 submitted a report to the Joint Commissioner about the suitability of the proposed premises and thereafter the Commissioner of Prohibition and Excise vide proceedings dated 01.08.2006 issued prior clearance for grant of Form 2B licence under Rule 5(2) of the Rules. Proviso to Rule 5(2) of the Rules clearly goes to show that grant of prior clearance shall not confer right on the applicant for grant of Form 2B licence and the holder shall not claim any compensation or loss in case licence in Form 2B is not granted. Thus, the proviso to Rule 5 of the Rules goes to show that there will not be any vested right entitling the applicant to get licence merely because prior clearance is granted, as prior clearance only entitles the applicant to apply in Form 2B for grant of Form 2B bar licence.

Pursuant to prior clearance, the petitioner applied in Form 1B along with Rs.10,000/- non-refundable application fee on 03.08.2006 along with all necessary documents to the Prohibition and Excise Superintendent on 05.08.2006. The Deputy Commissioner of Prohibition and Excise inspected the proposed premises and issued clearance on 08.08.2006.

3. It appears that in the meanwhile the members of the ladies club, Machilipatnam raised objections for grant of licence in favour of the petitioner, therefore, the Commissioner of Prohibition and Excise vide proceedings dated 08.08.2006 called for a report from the Deputy Commissioner of Prohibition and Excise, who after enquiry sent a report dated 14.08.2006 stating that the objections are not tenable.

As there was delay in issuing the licence the petitioner filed W.P.No.16870 of 2006, which was disposed by order dated 18.08.2006 directing the respondents to take steps in terms of the proceedings of the Commissioner

of Prohibition and Excise dated 17.08.2006 wherein the Commissioner directed the petitioner to approach the Deputy Commissioner of Prohibition and Excise for grant of licence in his favour. Thereafter, the Prohibition and Excise Superintendent, Mahabubnagar sent a detailed report dated 25.08.2006 on the objection petition and after considering the same, the Deputy Commissioner of Prohibition and Excise vide proceedings dated 12.09.2006 accorded permission for grant of licence in Form 2B in favour of the petitioner. Therefore, the Prohibition and Excise Superintendent vide proceedings dated 12.09.2006 issued 2B licence to the petitioner.

4. In view of the aforesaid facts and circumstances, the only question that arises is as to whether the petitioner is entitled for any remission. No doubt, with regard to allegation as to whether the premises of the petitioner is situated within the prohibited area as contemplated under Rule 6 of the Rules, there was some enquiry pending and it was completed, but whatever be the reasons, the question is whether the delay is attributable to the respondents.

The requirement of law under Rule 10 of the Rules is that annual fee has to be paid by the licensee if the licence is granted between 1st July and 31st September as per Rule 10(2)(b). Admittedly, the licence was granted was granted to the petitioner in the first quarter itself i.e. on 12.09.2006, though the licence has been granted on 12.09.2006 the petitioner has to pay full licence fee. If the licence is granted in the second quarter i.e. between 1st October and 31st December,

3/4th licence fee has to be paid; if the licence is granted in the third quarter i.e. between 1st January and 31st March, 1/4th licence fee has to be paid and if it is granted in the last quarter i.e. between 1st April and 30th June, 1/4th licence fee has to be paid. Therefore, as per the legal requirement, the petitioner has to pay the total annual fee. Therefore, I am of the opinion that the petitioner is not entitled for any remission of fee.

The writ petition is accordingly dismissed. There shall be no order as

to costs.

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V. ESWARAIAH, J

July 12, 2007
DSK